

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**Civil Division**

DISTRICT OF COLUMBIA,  Plaintiff,  v.  FAIRFAX REALTY OF FALLS CHURCH, LLC, D/B/A FAIRFAX REALTY SELECT, <i>et al.</i> ,  Defendants.	Case No. 2020 CA 003247 B  Judge Hiram Puig-Lugo
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**CONSENT ORDER**

This Consent Order (Order) is entered into between plaintiff District of Columbia (the District) and defendants Fairfax Realty of Falls Church d/b/a Fairfax Realty Select (Fairfax Realty), David P. Michalski, and Ellta Solomon (collectively, defendants) to resolve the above-captioned case. The District and defendants (collectively, the Parties) agree to the entry of this Order.

**I. THE PARTIES**

1. Plaintiff the District of Columbia, a municipal corporation, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Office of the Attorney General for the District of Columbia is authorized to investigate, file and resolve legal actions seeking injunctive relief, restitution, civil penalties, attorney's fees and costs for violations of the District of Columbia's laws, including the District of Columbia Human Rights Act

(DCHRA), D.C. Code § 2-1401.01 *et seq.*

2. Fairfax Realty of Falls Church, LLC d/b/a Fairfax Realty Select (Fairfax Realty) is a full-service real estate agency consisting of brokers and realtors licensed in the District, Maryland and Virginia.

3. Mr. David P. Michalski is a broker at Fairfax Realty. He is licensed in the District.

4. Ms. Ellta Solomon is a real estate agent at Fairfax Realty. She is licensed in the District.

## **II. THE DISTRICT'S ALLEGATIONS**

5. The District alleges as follows:

- a. The DCHRA provides that it is an “unlawful discriminatory practice” to make “any ... statement, or advertisement, with respect to a transaction, or proposed transaction, in real property ... [that] unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on ... source of income ... of any individual.” D.C. Code § 2-1402.21(a)(5). Rental payment from a housing voucher is a source of income under DCHRA. *See, e.g.*, OHR Guidance No. 16-01 (stating that source of income includes “short- and long-term rental subsidies” such as “Housing Choice Vouchers”).

- b. The DCHRA also provides that “it shall be an unlawful discriminatory practice to “refuse or fail to initiate or conduct any transaction in real property” where such refusal or failure is “wholly or partially ... based on the actual or perceived ... race ... of any individual.” D.C. Code § 2-1402.21(a)-(a)(1). Over 90 percent of voucher holders in the District are African American.
- c. The DCHRA also provides that any real estate salesperson or broker that violates the discrimination provisions of the DCHRA is a danger to the public interest. *See* D.C. Code § 2-1402.23.
- d. On or about January 3, 2020, defendant Solomon, acting under the brokerage of defendant Fairfax Realty, posted a discriminatory advertisement for 1700 Gainesville, Street, S.E., Washington D.C. 20020 (the Property). The advertisements stated that the Property was four-bedroom, three-bath townhouse available to rent in the District. The advertisements stated: “Section 8 Voucher holders not accepted at this time.” The advertisements were posted on Zillow.com, HotPads.com, Craigslist.com and ApartmentList.com.
- e. Defendants’ statements in the Property’s online postings that they would not rent to Section 8 Voucher holders is a discriminatory advertisement based on the source of income of individuals in violation of D.C. Code § 2-1402.21(a)(5).

- f. Defendants' advertising and refusal to accept voucher holders is also a discriminatory practice against African Americans in violation of D.C. Code § 2-1402.21(a)-(a)(1).
- g. As a real estate brokerage, defendant Fairfax Realty's discriminatory acts are violations of the DCHRA and therefore have endangered the public interest.
- h. As a real estate broker, defendant Michalski's discriminatory acts are violations of the DCHRA and therefore have endangered the public interest.
- i. As a registered real estate salesperson, defendant Solomon's discriminatory acts are a violation of the DCHRA and therefore have endangered the public interest.

### **III. DEFENDANTS' POSITION**

#### **6. Defendants state as follows:**

- a. Ms. Solomon posted a listing for a client who needed to rent out the property within a quick period of time. As a newly licensed real estate agent, this posting was her first listing in the District of Columbia.
- b. Based on the short turnaround, Ms. Solomon did not believe that the property would be approved under the process required for Housing Choice Voucher holds within the time that the client needed to rent out the property.

- c. Ms. Solomon mistakenly selected the option on the “BrightMLS” website for “No Section 8 Voucher at this time” based on the shortened timeframe. BrightMLS then posted the listing to the Zillow, HotPads.com, Craigslist, and ApartmentList.com platforms.
- d. Defendants are proponents of housing vouchers and anti-discriminatory sales and rentals. There was no discriminatory intent in defendants’ actions.

#### **IV. THE PARTIES’ AGREEMENT**

7. The Parties disagree as to the facts of this case, but, in an effort to resolve this case without further litigation, agree to settle this matter without acknowledgment of wrongdoing. The Parties voluntarily agree to the entry of this Order without trial or adjudication of any issue of fact or law as a full and final compromise settlement of all claims that the District has brought or could have brought in this case, and the District will take no further enforcement action against defendants as a result of the facts alleged in Case No. 2020 CA 003247 B. Nothing in the terms of this Consent Order shall be construed as an admission of wrongdoing by defendants, nor as an admission by the District that its claims are not well-founded.

#### **V. APPLICATION**

8. The provisions of this Order shall apply to defendant Michalski, defendant Solomon and Fairfax Realty and its principals, officers, directors and employees operating in the normal course of their employment with Fairfax Realty in the District of Columbia, unless otherwise noted in the injunctive term provisions below.

9. The provisions of this Order, including all terms of injunctive relief set forth herein, shall apply to defendant Michalski, defendant Solomon and Fairfax Realty and its principals, officers, directors and employees for so long as defendants offer services in the District.

**VI. INJUNCTIVE TERMS**

10. Defendants shall not engage in any practice with respect to its real estate services in the District, including the posting of advertisements, that violates the DCHRA, D.C. Code § 2-1402.21.

11. Defendants shall not post advertisements that either expressly or implicitly indicate any preference against housing voucher holders.

12. For so long as Fairfax Realty continues to offer services in the District, Fairfax Realty shall maintain written policies that reflect the District of Columbia's laws regarding discrimination based on source of income and other protected categories under D.C. Code § 2-1402.21. Fairfax Realty shall provide the policies required under this paragraph to all current employees, management and corporate officers. Within the first 14 days of an individual's employment, Fairfax Realty shall provide the policies as required under this paragraph to all new employees hired after the date of this Order. Fairfax Realty shall also provide the policies required under this paragraph to the District within 30 days of this Order.

13. Within 60 days of this Order, and on at least an annual basis for so long as Fairfax Realty continues to offer services in the District, Fairfax Realty shall provide training to all employees and management on D.C. Code § 2-1402.21 regarding

discrimination based on source of income and other protected categories, and on the District's fair housing laws.

14. For a period of three years after entry of this Order, on an annual basis, defendants shall submit to the District a sworn statement identifying any complaints received by defendants alleging a violation of the DCHRA, either formally or informally, and either in writing or orally. The statement shall include: (i) the date of the complaint and alleged incident; (ii) a summary of the complaint and alleged incident; and (iii) the remedial measures taken by defendants with respect to the complaint and alleged incident.

15. For a period of three years after entry of this Order, the defendants shall maintain records of all advertisements, notices, signs, or statements of available properties posted by either defendant, to be available for inspection by the District.

#### **VII. MONETARY PROVISIONS**

16. Within 30 days of the date of the entry of this Order, defendants shall pay the District a total of \$20,000.00 (twenty thousand dollars) to resolve all claims that the District has brought or could have brought in this case. Payment under this paragraph shall be by wire transfer, made payable to the D.C. Treasurer and delivered to the District.

#### **VIII. ADDITIONAL TERMS**

17. This Order represents the full and complete terms of the settlement entered by the Parties.

18. The Parties will file a stipulation of dismissal with prejudice pursuant to Rule 41(a)(1)(A)(ii) of the Superior Court Rules of Civil Procedure upon delivery of the payment to the District identified in paragraph 16 of this Order.

19. The Parties may apply to the Court to modify this Order by agreement at any time.

20. This Order shall be considered effective and fully executed on the date that the Court enters this Order. The Order may be executed in counterparts, and copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

21. All notices under this Order shall be provided to the following address by first class and electronic mail, unless a different address is specified in writing by the party changing such address:

For the District:

James Towns  
Nadeen Saqer  
Assistant Attorneys General  
Civil Rights Section  
Public Interest Division  
Office of the Attorney General for the District of Columbia  
400 Sixth Street, N.W., Suite 10100  
Washington, D.C. 20001  
tony.towns@dc.gov  
nadeen.saqer@dc.gov

For Defendants:

Elisabeth (Lisa) Shu  
Wilson Elser Moskowitz Edelman & Dicker LLP  
8444 Westpark Drive – Suite 510  
McLean, Virginia 22102-5102  
elisabeth.shu@wilsonelser.com



**FOR THE DISTRICT OF COLUMBIA:**

KARL A. RACINE  
Attorney General for the District of Columbia

*Fernando Amarillas*

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FERNANDO AMARILLAS  
Acting Deputy Attorney General  
Public Interest Division

Date: July 20, 2021

**FOR FAIRFAX REALTY SELECT:**

*D Michalski*

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David Michalski,  
on behalf of Fairfax Realty of Falls Church  
d/b/a Fairfax Realty Select

Date: 07.15.2021

**FOR DAVID MICHALSKI:**

*D Michalski*

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David Michalski

Date: 07.15.2021

**FOR ELLTA SOLOMON:**

*Ellta Solomon*

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Ellta Solomon

Date: 07/14/21

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

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Date

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The Honorable Hiram Puig-Lugo  
Judge, The Superior Court of the  
District of Columbia